

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:17-cv-157-FDW**

RODNEY WALLACE,)	
)	
Plaintiff,)	
)	
vs.)	<u>ORDER</u>
)	
GEORGE T. SOLOMON, et al.,)	
)	
Defendants.)	
)	

THIS MATTER is before the Court on initial review of Plaintiff's Complaint, (Doc. No.

- 1). He is proceeding *in forma pauperis*. See (Doc. No. 6).

I. BACKGROUND

Pro se Plaintiff Rodney Wallace filed a civil rights Complaint pursuant to 42 U.S.C. § 1983 alleging that he was being deprived of a diet that meets Islamic religious requirements at the Marion Correctional Institution. He currently resides at the Central Prison in Raleigh. He seeks injunctive relief.

II. STANDARD OF REVIEW

Because Plaintiff is a prisoner proceeding *in forma pauperis*, the Court must review the Complaint to determine whether it is subject to dismissal on the grounds that it is “(i) frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B). In its frivolity review, a court must determine whether the Complaint raises an indisputably meritless legal theory or is founded upon clearly baseless factual contentions, such as fantastic or delusional scenarios. Neitzke v. Williams, 490 U.S. 319, 327-28 (1989). A complaint should not be dismissed for failure

to state a claim “unless ‘after accepting all well-pleaded allegations in the plaintiff’s complaint as true and drawing all reasonable factual inferences from those facts in the plaintiff’s favor, it appears certain that the plaintiff cannot prove any set of facts in support of his claim entitling him to relief.’” Veney v. Wyche, 293 F.3d 726, 730 (4th Cir. 2002) (quoting Edwards v. City of Goldsboro, 178 F.3d 231, 244 (4th Cir. 1999)).

A *pro se* complaint must be construed liberally. Haines v. Kerner, 404 U.S. 519, 520 (1972); see also Smith v. Smith, 589 F.3d 736, 738 (4th Cir. 2009) (“Liberal construction of the pleadings is particularly appropriate where … there is a pro se complaint raising civil rights issues.”). However, the liberal construction requirement will not permit a district court to ignore a clear failure to allege facts in his complaint which set forth a claim that is cognizable under federal law. Weller v. Dep’t of Soc. Servs., 901 F.2d 387 (4th Cir. 1990). A *pro se* complaint must still contain sufficient facts “to raise a right to relief above the speculative level” and “state a claim to relief that is plausible on its face.” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555, 570 (2007); see Ashcroft v. Iqbal, 556 U.S. 662 (2009) (the Twombly plausibility standard applies to all federal civil complaints including those filed under § 1983). This “plausibility standard requires a plaintiff to demonstrate more than a sheer possibility that a defendant has acted unlawfully.” Francis v. Giacomelli, 588 F.3d 186, 193 (4th Cir. 2009) (internal quotation marks omitted). He must articulate facts that, when accepted as true, demonstrate he has stated a claim entitling him to relief. Id.

III. DISCUSSION

In the Complaint, Plaintiff seeks injunctive relief; however, he is no longer incarcerated at Marion Correctional Institution. He is now incarcerated at Central Prison. As a general rule, the transfer or release of a prisoner from prison renders moot the prisoner’s claims for injunctive and

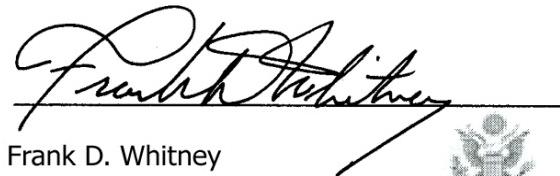
declaratory relief. Rendelman v. Rouse, 569 F.3d 182, 186 (4th Cir. 2009) (release from prison rendered moot the plaintiff's request for injunctive and declaratory relief); Williams v. Griffin, 952 F.2d 820, 823 (4th Cir. 1991) (transfer of prisoner mooted claims for injunctive and declaratory relief). Because Plaintiff is no longer incarcerated at Marion C.I., his claim for injunctive relief is moot and this action will therefore be dismissed without prejudice.

For the reasons stated herein, the Court will dismiss this action without prejudice.

IT IS, THEREFORE, ORDERED that:

1. Plaintiff's Complaint, (Doc. No. 1), is dismissed without prejudice as moot.
2. The Clerk shall terminate this action.

Signed: April 6, 2018



Frank D. Whitney
Chief United States District Judge

